

PART 6

BOARD OF ADJUSTMENT

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14-2-601 BOARD OF ADJUSTMENT CREATED

There is hereby created a Board of Adjustment which shall consist of five (5) members and two (2) alternate members, each to be appointed by the City Council for a term of five (5) years, provided that the terms of the members of the first board so appointed shall be such that the term of one member shall expire each year. One member, but only one, of the Planning and Zoning Commission may be a member of the Board of Adjustment.

14-2-602 REMOVAL FROM OFFICE

Members of the Board of Adjustment may be removed for cause by the City Council upon written charges and after public hearing if a public hearing is requested by the member being removed.

14-2-603 VACANCIES TO BE FILLED

Any vacancy on the Board of Adjustment occurring by reason of death, resignation, removal or expiration of term shall be filled by the Mayor with the advice and consent of the City Council. Vacancies shall be filled within forty-five (45) days after the date of the vacancy.

14-2-604 ORGANIZATION OF BOARD OF ADJUSTMENT

The Board of Adjustment shall organize and annually elect a Chairman and Vice-Chairman and adopt rules in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or the Vice-Chairman in the absence of the Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member on each question, or if absent, or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions all of which shall be immediately filed in the office of the Secretary of the Board in the Planning Department, and shall be a public record.

14-2-605 RULES GOVERNING ALTERNATE MEMBERS OF THE BOARD

Alternate members of the Board of Adjustment shall serve in the absence of members of the board. When the absence of a member or members of the board for any meeting is known in advance, alternate members shall be called upon to fill such vacancies for that meeting. When filling such vacancies, alternate members shall have full voting powers to decide matters before the board on that specific meeting's agenda.

14-2-606 VARIANCES - PROCEDURE

The Board of Adjustment may authorize, upon application, such variances from the terms of this Ordinance as will not be contrary to the public interest, where owing to the special conditions the literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of the Ordinance shall be observed and substantial justice done.

Applications for variance shall be filed with the Planning Department. Said application shall contain the following information:

- A. A description of the requested variance, together with a description of that Ordinance provision for which relief is being requested and why such provision causes undue hardship or need for variance.
- B. An accurate plot plan, where appropriate, indicating the manner in which the variance will be applied and its effect on adjacent properties.
- C. A filing fee as set by the City Council.

Upon receipt of the application by the Planning Department, a copy with all accompanying materials shall be forwarded to the Board of Adjustment for their action. The Board of Adjustment shall hold a hearing to review the request and other concerns and take appropriate action upon the request.

Notices for variance hearings shall be:

- 1. Published in a newspaper of general circulation at least fourteen (14) days before the date of the hearing.
- 2. Sent to all property owners within a five hundred (500) feet radius around the subject property fourteen (14) days prior to the hearing date.
- 3. Posted with notification signage on the subject property by the applicant/agent. The signage shall be provided to the applicant/agent by the City and shall be posted by the applicant/agent ten (10) days in advance of the scheduled meeting. The City will inspect the property to verify the posting of the signage.

The Board of Adjustment, after hearing necessary testimony, information and citizen input, shall

then make a finding conforming to Section 14-2-609 of this Chapter. In granting a variance, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of property to which the variance applies will be as compatible as practicable with the surrounding properties.

14-2-607¹ APPEALS TO THE BOARD OF ADJUSTMENT

A. Appeals of Zoning Enforcement Orders, Requirements or Decisions. Appeals to the Board of Adjustment may be taken by persons aggrieved by an order, requirement, or decision or determination made by the Planning Department in the enforcement of this Ordinance.

B. Appeals of Administrative Hearing Officer. Appeals to the Board of Adjustment may be taken by persons aggrieved by final decisions of the Administrative Hearing Officer.

C. Procedure. Appeals to the Board of Adjustment must be made within fifteen (15) days of the date of any order, requirement, decision or determination by the Planning Department or the date of the Administrative Hearing Officer's decision. A Notice of Appeal shall be filed in writing with the Planning Director specifying the grounds of the appeal and circumstances related thereto. The Planning Director shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed was taken.

An appeal stays all proceedings in furtherance of the action appealed from unless the Planning Director certifies to the Board of Adjustment, after the Notice of Appeal shall have been filed with the Planning Department, that by reason of facts stated in the Certificate a stay would, in the Director's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or by the District Court on application and notice and on due cause shown.

The Board of Adjustment shall set a hearing on the appeal. In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of the Planning Department, or Administrative Hearing Officer as ought to be made, and to that end shall have all of the powers of the enforcement of this Ordinance. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination or to decide in favor of the appellant on any matter upon which it is required to pass under such ordinance.

14-2-608 APPEALS FROM THE BOARD OF ADJUSTMENT

Bountiful City or any person directly aggrieved by any decision of the Board of Adjustment may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction; provided, petition for such relief is presented to the court within thirty (30) days after the date of such decision.

¹Amended 3/5/97 Ordinance 97-5

14-2-609 DUTIES AND POWERS OF THE BOARD OF ADJUSTMENT

The Board of Adjustment shall have the following powers:

- A. To hear and decide special exceptions to the terms of this Ordinance upon which such Board is required to pass under provisions of this Ordinance.
- B. To authorize upon appeal such variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of this Ordinance shall be observed and substantial justice done. Before any variance may be authorized, however, it shall be shown that:
 - 1. literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;
 - 2. there are special circumstances attached to the property that do not generally apply to other properties in the same district;
 - 3. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 - 4. the variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - 5. the spirit of the zoning ordinance is observed and substantial justice is done.

In determining whether or not a variance should be granted the Board of Adjustment shall strictly adhere to the provisions of Section 10-9-707, Utah Code Annotated, 1953, as amended.

- C. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the administrative official in the enforcement of this Ordinance or of any ordinance adopted pursuant thereto.
- D. To review and authorize those routine and uncontested matters which the Administrative Hearing Officer shall hear.